



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTI/167209

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 10, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a telephone hearing was held on September 01, 2015. A hearing originally scheduled for August 4, 2015, was rescheduled at petitioner's request.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a child care overpayment notice, dated February 7, 2014. It indicated that Petitioner had been overissued child care benefits in the amount of \$12747.00 during the period

from February 10, 2013 through June 30, 2013 (claim # [REDACTED]). The notice contained appeal instructions and noted the appeal deadline 45 days from the date of the notice.

3. The agency alleged this overpayment because the agency erred in determining eligibility and processing case information timely. The agency determined that Petitioner was not in an approved activity.
4. Petitioner's household is a 2 parent household. Petitioner's spouse worked, as did Petitioner but, on January 29, 2013, Petitioner reported that she had stopped working as of January 28, 2013. The agency failed to end Petitioner's eligibility and authorization. Petitioner's child care provider continued to bill the Wisconsin Shares Child Care program.
5. Petitioner appealed the overpayment determination on April 3, 2014. A hearing was held and petitioner's appeal was dismissed because she failed to file her appeal timely (see, Division of Hearings and Appeals Case no. CCO/156536).
6. The respondent notified the petitioner on October 17, 2014, that it would intercept any tax refunds or credits in order to collect the balance due on the overpayment.
7. Petitioner appealed the tax refund action on July 10, 2015.

### **DISCUSSION**

The Department of Children and Families is required to recover all overpayments of public assistance benefits, including child care payments. Wis. Stat., §§49.195(3), 49.155. Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, food stamps, W-2 benefits including child care, and Medical Assistance.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing *to exclude issues* that were presented at a prior hearing or *that could have been presented at a prior opportunity for hearing*.

Italics added. Petitioner was notified of the overpayment in February, 2014, and she appealed. An appeal of a negative action concerning child care benefits must be filed within 45 days of the action, and the notices inform the recipients of that deadline. Wis. Adm. Code, §HA 3.05(3). Because petitioner appealed, and her appeal was dismissed, she cannot appeal the merits of the overpayment now.

The notice of tax intercept specified that petitioner must appeal within 30 days of the date of the tax intercept notice. Her appeal was filed almost nine months after the date of the tax intercept notice. I conclude that petitioner's appeal was untimely, and that the PACU may utilize the tax intercept to recover the overpayment.

### **CONCLUSIONS OF LAW**

1. Petitioner's appeal was untimely.
2. The respondent may intercept petitioner's income tax refund.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 29th day of October, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 29, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit